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RUEHKO/AMEMBASSY TOKYO 3402
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C O N F I D E N T I A L SECTION 01 OF 04 COLOMBO 000264

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DEPARTMENT FOR SCA/INS

E.O. 12958: DECL: 03/06/2018
TAGS: PGOV PREL PTER PHUM MOPS CE

SUBJECT: SRI LANKA: EMINENT PERSONS REITERATE PROBLEMS
WITH COI AND ANNOUNCE RESIGNATION

REF: A. 07 COLOMBO 1651

1B. 07 COLOMBO 1582
1C. 07 COLOMBO 1358

Classified By: Ambassador Robert O. Blake, Jr., for reasons 1.4(b,d).

¶1. (C) SUMMARY: The International Independent Group of Eminent Persons (IIGEP) issued its fifth public statement on March 6, reiterating its concerns about the Commission of Inquiry's (COI) lack of progress and failure to adhere to international norms. The statement also announced IIGEP's decision to terminate its activity in Sri Lanka by the end of April. The COI's response statement acknowledged ongoing resource constraints and the sometimes strained relationship between COI and IIGEP, but regretted IIGEP's decision to withdraw. The Attorney General's (AG) comments were predictably defensive. IIGEP's final public statement and final report to the President are scheduled to be released on March 31. In the meantime, IIGEP is working on arrangements for safekeeping IIGEP's files and to facilitate contacting of out-of-country witnesses in the event of future inquiries or trials in the "Trinco 5" and Action Contre la Faim/Muttur cases. End Summary.

Fifth IIGEP Statement Details COI Flaws
and Announces IIGEP's Withdrawal

¶2. (U) IIGEP's fifth public statement welcomed the commencement of the COI's public inquiry phase on January 5. However, it noted poor attendance of interested parties and recommended further efforts to ensure people are made aware of the hearings, including holding some public hearings outside Colombo to improve accessibility for potential witnesses. The statement pointed out that the public hearing phase was suspended for one month, until February 15, and has proved largely ineffective so far in unearthing useful or actionable evidence. IIGEP expressed concern about the intervention of the Judicial Services Commission (note: chaired by the Chief Justice of the Supreme Court), which prevented the Trincomalee magistrate from testifying before

the COI. IIGEP suggested that the COI examine why the flaws in the original police investigations were undetected, ignored, and even abetted by the responsible government authorities.

¶3. (C) IIGEP expressed continued concerns about the absence of witness protection legislation and said that insufficient efforts are being made to ensure the protection and safety of victims and witnesses. IIGEP reiterated its view that the COI should be sufficiently funded by the government and that it should be given control over its own spending.

¶4. (C) IIGEP announced its decision to terminate its activities, saying the Eminent Persons "no longer see how they can contribute further to the protection and enhancement of human rights in Sri Lanka." IIGEP noted that most of its suggestions and observations to the COI and the GSL have been ignored or rejected and that official correspondence directed to IIGEP has too often lacked respect and civility. IIGEP concluded that the proceedings of the COI have fallen "far short of the transparency and compliance with basic international norms and standards." Major identified flaws included the conflict of interest represented by the AG's involvement in COI proceedings, a lack of proper funding and staff, poor organization of hearings and lines of questioning, refusal of State authorities to cooperate with the investigations and inquiries, and the absence of an effective and comprehensive system of witness protection. The EPs acknowledged that the overall context in which the COI is operating, including the underlying culture of impunity and climate of threat to those who might identify perpetrators, makes it unlikely, if not impossible, for the COI to fulfill its mandate. IIGEP noted a lack of political

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and institutional will to resolve the cases assigned to the COI. IIGEP clarified that its resignation is based on the institutional lack of support for the work of the COI as well the actual shortcoming of the COI's work. Finally, IIGEP observed the absence of a minimum level of trust between the COI and IIGEP, which prevented a successful working relationship.

Attorney General Fiercely Defends GSL Record

¶5. (U) The AG's response accused IIGEP of timing the release of the statement to coincide with the 7th Sessions of the UN Human Rights Council in Geneva. His statement said that the intent of the Eminent Persons appeared to be ensuring "international condemnation of Sri Lanka" and that IIGEP's statement commented on issues outside its mandate. The AG asserted that criticism leveled at his office was unfounded, considering the authorities vested in the AG under Sri Lankan law. He claimed that the "now finalized" witness protection legislation would assist the COI in providing necessary protections to victims and witnesses. The AG stated that only the President has the authority to dissolve IIGEP. As such, if the current EPs resign, Sri Lanka will take steps to reconstitute the IIGEP with an alternate group of EPs "who are likely to work according to the mandate of the IIGEP and in constructive partnership with the Commission of Inquiry." The AG clarified that, in any case, the continued existence of IIGEP is not a precondition for the functioning of the COI and that the COI will carry on with its work.

COI Acknowledges Constraints and Regrets IIGEP Resignation

¶6. (U) The COI's response expressed shared disappointment over the low level of public attendance at the public hearings and noted that notification was made on a "modest scale in keeping with resource constraints." The COI said that holding inquiries outside of Colombo had been considered, but proved to be prohibitively costly. It also noted that

several hearings in January and February had to be canceled because the COI's access to the convention center where its offices are located was restricted for security reasons. The COI said it has "been operating subject to several handicaps including lack of resources, lack of witness protection legislation and lack of international support." However, the COI "very much appreciates the critically important help provided by IIGEP in locating and securing statements from certain key witnesses who had fled overseas." In conclusion, the COI observed that "some effective cooperation has been possible... and could have continued" and "regretted that the IIGEP have unilaterally decided to withdraw."

IIGEP Work Comes to an End

17. (C) IIGEP has scheduled its final public statement for release on March 31, and plans to submit its final report to the President the same day. US Eminent Person Gene Dewey will present the report to the President. IIGEP has noted that a number of witnesses in the cases under investigation by the COI, and their relatives, have left Sri Lanka. IIGEP is working with the COI and IIGEP donor countries to establish a procedure for accessing the witnesses if GSL authorities decide to pursue these cases. IIGEP is also looking to establish a secure means of storage for its own records and documents collected over the past year. IIGEP prefers to store the materials outside Sri Lanka and is looking for an international organization willing to accept them. It plans to return all materials received from the COI and the government.

18. (C) The draft final public statement declares that

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"IIGEP has not been able to conclude... that the proceedings of the Commission have been transparent or have satisfied basic international norms and standards." It reiterates the reasons for this conclusion: a conflict of interest in the proceedings before the Commission, namely the involvement of the AG's office; the lack of effective victim and witness protections; the lack of transparency and timeliness in the proceedings; the lack of full cooperation by State bodies; and the lack of financial independence of the Commission.

IIGEP recommends that:

- the President immediately compel all State bodies to provide full disclosure of information
- the government continue to assert and develop the doctrine of command responsibility in Sri Lankan law
- the government establish a workable, effective and permanent system of victim and witness protection
- the COI include in its inquiries an examination of the reasons for the systemic failures and past impunity in relation to the cases under review, and
- the government immediately provide necessary financial resources to the COI.

IIGEP concludes that there was an "absence of political and institutional will on the part of the government to pursue with vigor the cases under review." IIGEP notes that it is "keenly aware of the security situation" in Sri Lanka, but rejects the opinion that "human rights and respect for the rule of law should take second place to measures necessary to repel these hostilities." IIGEP asserts that "respect for human rights, and the conduct of military operations in strict accordance with international humanitarian law, are powerful weapons in the struggle against dissident forces and terrorism in that they help to earn the trust and support of the civilian population... and promote within the police and armed forces professionalism and self-respect."

UK Eminent Person Speaks Out

19. (C) On March 8, UK Eminent Person Sir Nigel Rodley commented to a BBC Tamil service correspondent that IIGEP "felt there were shortcomings in the structure of the COI"

and that the "Attorney General's presence in the COI and the participation of his office in the commission was a factor that reduced the credibility of the commission." These comments, although largely consistent with the message of the public statement released on March 6, are the first individual public comments made by an EP. It is unclear whether Rodley cleared his comments with the other EPs before making them.

¶10. (C) COMMENT: IIGEP's characterization of the COI's work is frank, but balanced and consistent with the meager results the COI has produced. Post recognizes that IIGEP faces a problem of how to preserve its legacy after it dissolves, and that the issue of preserving contact with potential witnesses abroad is critical. Some of the IIGEP professional staff are reportedly disappointed that the draft public statement does not go beyond observations about the COI's work to draw conclusions about the facts behind the key cases (post will report septel when more information becomes available). However, the Eminent Persons appear to have taken a decision to remain within a fairly conservative, limited interpretation of their mandate. We expect the GSL to reject IIGEP's final assessment and to provide a host of excuses for the COI's poor track record. According to media reports, the government is mulling over constituting a new IIGEP drawn from its SAARC neighbor countries. We think it is likely this will fail because there is no apparent source of funding for what would be a fairly expensive undertaking. In any case, a new IIGEP will probably not be in a position to accomplish more than the present one, which has made every reasonable effort to contribute positively to a successful outcome of the COI's work. Further, although the GSL may seek to cite the existence of the COI as evidence of its

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commitment to improve human rights accountability, we believe that the usefulness of this stratagem has run its course. Ambassador will host a meeting on March 17 with Ambassadors of like-minded countries to discuss how we might press for progress on human rights following the conclusion of IIGEP. Mission will report the result of that meeting.

BLAKE